

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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ATTORNEYS FOR PLAINTIFF
FEDERAL TRADE COMMISSION

<u>FEDERAL TRADE COMMISSION,</u>)
<i>Plaintiff,</i>)
)
v.)
)
SOLACE INTERNATIONAL, INC.,)
a corporation,)
)
BIOSCIENCE RESEARCH INSTITUTE LLC,)
a limited liability company, and)
)
AARON LILLY,)
individually and as owner, officer,)
and director of Solace International, Inc.,)
and Manager of Bioscience)
Research Institute LLC,)
<i>Defendants.</i>)

CASE NO.

COMPLAINT FOR
PERMANENT INJUNCTION
AND OTHER EQUITABLE
RELIEF

COMPLAINT FOR PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF

Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), for its complaint
alleges:

1. The FTC brings this action pursuant to Section 13(b) of the Federal Trade Commission Act

(“FTC Act”), 15 U.S.C. § 53(b), to obtain a permanent injunction, rescission or reformation of contracts, restitution, the refund of monies paid, disgorgement of ill-gotten monies, and other equitable relief for Defendants’ acts or practices in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52, in connection with the labeling, advertising, marketing, distribution, and sale of DermaTend, a topical cream, and Lipidryl, a dietary supplement.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction pursuant to 15 U.S.C. §§ 45(a), 52, and 53(b), and 28 U.S.C. §§ 1331, 1337(a), and 1345.
3. Venue is proper in this district under 15 U.S.C. § 53(b) and 28 U.S.C. § 1391(b)(1), (b)(2), (c)(1), and (c)(2).

THE PARTIES

4. Plaintiff FTC is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41-58. The FTC enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce. The FTC also enforces Section 12 of the FTC Act, 15 U.S.C. § 52, which prohibits false advertisements for food, drugs, devices, services, or cosmetics in or affecting commerce.
5. The FTC is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act, and to secure such equitable relief as may be appropriate in each case, including rescission or reformation of contracts, restitution, and the disgorgement of ill-gotten monies. 15 U.S.C. § 53(b).
6. Defendant Solace International, Inc. (“Solace”) is a Nevada corporation with its principal office or place of business at 80 W. 1st St., Suite C, Reno, Nevada 89501. In connection with

the matters alleged herein, it transacts or has transacted business in this District and throughout the United States.

7. Defendant Bioscience Research Institute LLC (“Bioscience”) is a Nevada limited liability company with its office or principal place of business at 80 W. 1st St., Suite C, Reno, Nevada 89501. In connection with the matters alleged herein, it transacts or has transacted business in this District and throughout the United States.

8. Defendant Aaron Lilly is the sole owner, President, and director of Solace. In addition, he is the sole owner and Manager of Bioscience. He is a Nevada resident. His principal office or place of business is the same as that of Solace and Bioscience. At all times material to this complaint, acting alone, or in concert with others, Lilly has formulated, directed, controlled, had the authority to control, or participated in the acts and practices of Solace and Bioscience, including the acts and practices set forth in this Complaint. In connection with the matters alleged herein, he transacts or has transacted business in this District and throughout the United States.

COMMON ENTERPRISE

9. Defendants Solace and Bioscience have operated and continue to operate a common enterprise while engaging in the unlawful acts or practices alleged below. These entities have a common business purpose, and share common ownership, control, management, staffing, and office locations. Because these entities have operated as a common enterprise, each of them is jointly and severally liable for the acts and practices alleged below. Individual Defendant Lilly has formulated, directed, controlled or had authority to control, or participated in the acts and practices of the entities, Solace and Bioscience, that constituted the common enterprise.

COMMERCE

10. At all times material to this Complaint, Defendants have maintained a substantial course of trade in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANTS’ COURSE OF CONDUCT

11. Defendants have labeled, advertised, marketed, distributed, and sold DermaTend, an over-the-counter drug promoted for mole, wart, and skin tag removal. The product is sold in two strengths: Original (“Original”) and DermaTend Ultra, sometimes called Extra Strength or Ex DermaTend Ultra (“Ultra”) (collectively referred to as “DermaTend”). They contain 30% bloodroot (a botanical) and either 5% (in Original) or 10% (in Ultra) zinc chloride. A 0.17 ounce (five gram) container of Original costs approximately \$39.95. A 0.34 ounce (ten gram) container of Ultra costs approximately \$69.95. Provided with the product are a toothpick and an emery board.

12. DermaTend directions instruct consumers to abrade the mole, wart, or skin tag using the toothpick or emery board, to apply the product one time, and to wash it off after 45 minutes. If no scab appears after twenty-four hours, consumers are directed to repeat these steps daily until a scab forms.

13. Defendants have advertised DermaTend in media including SkyMall magazine (Exhibit B), Amazon.com (Exhibit C), eBay (Exhibit D), and Google AdWords (Exhibit G). DermaTend also is marketed and sold through websites owned by Solace, including, but not limited to, www.dermatend.com (Exhibit E), and www.moleremoval.net (Exhibit F).

14. In addition, DermaTend is marketed through affiliates who act on behalf of and for the

benefit of Defendants. Affiliates are paid a 30% commission on completed DermaTend sales. In many cases, affiliates market DermaTend through websites. These websites provide information about DermaTend and include a link to a Solace site where DermaTend may be ordered.

Affiliate sites often contain purportedly independent reviews of the product. Examples of affiliate marketing sites have included www.bestgenitalwarttreatment.com (Exhibit H), www.naturalmoleremovals.com (Exhibit I), and www.my-dermatend-review.com (Exhibit J).

15. Some DermaTend advertising contains endorsements from purportedly satisfied users, including “before-and-after” photos showing removal of moles, skin tags, or warts, and/or written statements. Defendants solicited such endorsements by offering to and providing payment, in the form of money, reimbursement of purchase costs, and/or free product.

16. To induce consumers to purchase DermaTend, Defendants have disseminated or caused to be disseminated advertisements, packaging, and promotional materials, including, but not limited to, the attached Exhibits A through G. In addition, Defendants, through affiliates acting on their behalf and for their benefit, have disseminated or caused to be disseminated advertisements and promotional materials, including, but not limited to, the attached Exhibits H through J.

17. The advertisements, packaging, and promotional materials referenced in Paragraphs 13 through 16 have contained the following statements and depictions:

A. Package insert (Exhibit A)

DERMATEND® ALL NATURAL

- Clinic Tested Doctor Recommended
- Fast Permanent Results Guaranteed
- Won't Be Left With Large Surgical Scars

* * *

Mole, Wart and Skin Tag Removal

[before-and-after photos depict complete removal of large facial mole and large foot wart without scarring]

B. SkyMall magazine (Exhibit B)

Surgery is NOT your only option for mole and skin tag removal

Did you know you can safely remove your unwanted moles and skin tags at home?

With today's breakthroughs in herbal chemistry, there is no reason for you to suffer with these unsightly skin growths. DermaTend® Mole & Skin Tag Remover is a natural herbal remedy that can change your skin forever. It's safe, affordable and works fast! Imagine in just a few short days you will be free of your ugly moles or skin tags for good! [before and after photos depict complete mole removal with no scarring]

(August 2013)

C. Amazon.com (Exhibit C)

Ex DermaTend Ultra Mole & Skin Tag Removal System: Removes 15 Moles or Skin Tags. Works in Just 8 Hours. 60 Day Guarantee. 100% Natural.

* * *

Important Information

Directions

While some individuals will find results in just a few applications, the vast majority of our customers report that IT TAKES CLOSER TO 7-10 APPLICATIONS before complete removal is achieved, sometimes longer for more stubborn blemishes. . . .

Product Description

At twice the size of our Original formula, DermaTend Ultra is a NATURAL, extra-strength herbal formula that safely removes moles, warts & skin tags from your body, all in the convenience of your home. DermaTend works on all types of moles, warts & skin tags even the ones that you have had all of your life.

Using natural and organic ingredients, DermaTend penetrates to the root of the mole, wart, or skin tag. Your body works with this safe, powerful formula, leaving little chance of scarring and eliminating the skin growths [sic] ability to ever come back. . . .

(11/5/2013)

D. eBay (Exhibit D)

DERMATEND® The Original (.17 oz)

Over 1 Million Moles & Skin Tags

Removed Safely At Home

- **Safe, Easy, Natural Home Treatment**
- **No Surgery or Large Surgical Scars**

* * *

Think surgery is your only option? Think again. . . DermaTend is 100% guaranteed to remove ALL your unwanted moles and skin tags quickly and painlessly at home!

* * *

With as little as one application, you can watch your moles and skin tags disappear from your life FOREVER!

* * *

- **97% success rate**

Real Results With Real People

[before-and-after photos depict complete mole removal with no scarring]

(10/31/2013)

E. Dermatend.com (Exhibit E)

1. * * *

DermaTend Mole Wart & Skin Tag Remover is an all-natural proprietary formula that can change your life forever. Getting rid of all your unwanted moles warts & skin tags naturally is NOT impossible and no longer requires cutting, burning, or expensive laser surgery.

With DermaTend, it can take just one application to remove the moles, warts, or skin tags that have plagued your self-esteem for too long.

This may seem too good to be true, but it's not. DermaTend® is completely safe and natural and has quickly made surgery obsolete. . .

This means no more embarrassing doctor visits, no more ugly surgical scars, and no more embarrassing skin problems!

* * *

DermaTend® Products

Choose One That Works for You

Original

DermaTend® Remover

* * *

- Results in as little as 3 days

* * *

Extra Strength

DermaTend® Ultra

- Results overnight in ONE application

(2/19/2013)

2. Real User Results

Video Testimonials

* * *

Photo Testimonials

[before-and-after photos depict complete removal of moles without scarring]

“Some time ago I purchased your product with the hope that it may change my life.

I had a big mole on my face which I lived with for over 40 years. Just as you promised it is now gone. . . .” Raymond S.

[before-and-after photos depict complete removal of large mole without scarring]

“I used Dermatend with high hopes in [sic] removing my mole like they promised.

With a full refund guaranteed if it didn’t work, I decided to try it. My mole above my eye fell off after the 3rd application. I couldn’t believe it and I can’t thank you

enough DermaTend, you saved me a lot of money and I feel better about the way I look. Malleena M. London, UK

* * *

Facial Mole Removal

* * *

Mole Removal Introduction

Moles, or nevi, are generally removed for various reasons. They can be removed by 2 surgical methods:

- **Excision (cutting) with stitches**
- **Excision with cauterization**

Although laser has been tried for moles it is usually not preferred for deep moles because the laser light cannot penetrate deeply enough. Typically the doctor or dermatologist (a skin specialist) may choose excision with or without stitches . . .

The most common side effect of mole removal is a scar. Many people will attempt to remove moles for cosmetic reasons, not realizing that each and every removal of [a] mole may produce a scar.

* * *

DermaTend® A Natural Solution For Facial Mole Removal:

Don't accept it as a natural effect. Now you can remove moles whenever you want, without any painful surgery and side effects. DermaTend® a natural and herbal mole removal formula which can remove moles from any part of your body without any scarring and side effects. It is an ideal product for facial mole removal where you cannot take a chance of having a scar.

(2/6/2014)

F. Moleremoval.net (Exhibit F)

CLINIC TESTED NATURAL MOLE REMOVER

Mole Removal Cream Makes Surgery Obsolete!

[photos depict surgical mole excision]

* * *

I am sure from the pictures above you more than likely disapprove of surgery as the “only” option for mole removal. . . . Mole removal surgery never comes with a guarantee and the end result usually promises a hideous scar.

* * *

Here's What You Can Expect With DermaTend

[before-and-after photos depict mole removal without scarring]

* * *

Frequently Asked Questions

* * *

Q. Does DermaTend® Cause Any Scarring?

A. You have the best chance of no scarring, but with any healing process it may occur. However, you still have far less chance of scarring than you would with surgical methods.

* * *

Q. Is DermaTend® Safe For Children?

A. Yes, it can be used on children just as adults but parental supervision is needed. DermaTend® has no effect on normal tissue, but can be toxic if taken internally.

* * *

Q. Why Does My Dermatologist Recommend Surgery?

A. Firstly, most dermatologists are only schooled in the conventional ways. They do not cover any natural remedies in school unless they choose to educate themselves on their own time. This sad fact keeps them ignorant to more pleasant and effective solutions. If you have any questions feel free to visit your dermatologist and see what he has to say about DermaTend®. Most will tell you that it is safe to use and worth a try.

(10/31/2013)

G. Google AdWords (Exhibit G)

Mole Removal In 3 Days?

Proven Mole Removal Cream

Permanently Removes Moles!

* * *

{Keyword: Mole Removal At Home?}

Remove Mole in Just 3 Days. No Scar

Dr Recommended & Clinically Tested

* * *

Genital Wart Removal

Removes Warts in 3 Days or Less.

60 Day Money Back Guarantee!

H. Affiliate site: www.bestgenitalwarttreatment.com (Exhibit H)

DermaTend® Reviews

* * *

What is DermaTend® Genital Warts?

Dermatend Genital Warts is a natural genital wart removal that has been created for eliminating these conditions. . . . Dermatend works effectively by penetrating the skin to deliver healing and killing of the viruses with natural agents. Dermatend is a proven solution that has been helping thousands and thousands of users with its effective solutions.

[depiction of DermaTend package]

Best Overall Warts

Treatment Product

* * *

- Clinic Tested Doctor Recommended.

* * *

(1/14/14)

- I. Affiliate site: www.naturalmoleremovals.com (Exhibit I)

Dermatend Review

* * *

For moles, skin tags, and warts, there are a number of home and over-the-counter remedies you can choose from – and then there's DermaTend. DermaTend is a powerful, yet all-natural treatment that safely and effectively removes moles, skin tags and warts without the need for painful and dangerous surgical procedures. . . . DermaTend has been clinically tested and proven to work in most people.

(1/14/24)

J. Affiliate site: www.My-Dermatend-Review.com (Exhibit J)

My DermaTend Mole Removal Story

* * *

I have removed two moles on my neck using DermaTend mole remover. I started with 4 moles on my neck. 2 more to go!

One of the moles scabbed overnight. The scab came off 3 days later! There was a little bit of pink/redness where the scab was, but this healed within several weeks and returned to normal skin color. (As would happen with any scab on your body)

The second mole took two nightly applications. That scab came off [sic] about a week and a half later revealing fresh skin.

* * *

Well, I am just glad that **everything healed so wonderfully**. I have a very minimal mark left behind which is NOTHING compared to the large scar I have on my back from surgical removal.

Click the photos to see a larger view.

[before-and-after pictures show complete removal of two moles.]

AFTER (2 TO GO!)

* * *

Click To

Buy DermaTend

* * *

Remove Warts with Natural Remedies: There are several natural wart removal pastes out there. I will be talking about the one I know and trust, DermaTend. My aunt removed a wart she had between 2 toes with it overnight, and my step mother removed one she had on the palm of her hand in several days.

(1/14/14 and 1/16/14)

18. Defendants have labeled, advertised, marketed, distributed, and sold Lipidryl, a dietary supplement promoted for weight loss. One Lipidryl capsule contains 150 mg of *Irvingia gabonensis* (African mango seed) extract. Users are instructed to take one capsule thirty minutes to an hour before breakfast and lunch. A 3-month supply of Lipidryl costs \$129.99.

19. Defendants have advertised Lipidryl in media including SkyMall magazine (Exhibit K) and Amazon.com, as well as a website owned by them, www.Lipidryl.net.

20. To induce consumers to purchase Lipidryl, Defendants have disseminated or caused to be disseminated advertisements, packaging, and promotional materials, including, but not limited to, the attached Exhibit K, which contains the following statements and depictions:

SkyMall magazine (Exhibit K)

* * *

- **A revolutionary new compound** has been discovered and tested in a rigorous clinical study of over 100 overweight subjects.

* * *

Subjects Lost 28 Pounds in 10 Weeks*¹

* * *

Dropped 6.7 Inches From Their Waistline*¹

* * *

Reduced Body Fat an Astounding 18.4%*¹

* * *

- The Bioscience Research Institute has put the clinical dose used in the trail [sic] into a capsule and has made Lipidryl® available to the public. We only sell a 3 month supply of Lipidryl®, based on the clinical results.

* * *

Scientific References: 1. Ngondi JL, Matsinkou R, Oben JE. The use of Irvingia gabonensis [sic] extract (IGOB131) in the management of metabolic syndrome in Cameroon. Nutrition J. 2008 (submitted)

(July 2013-October 2013)

DEFENDANTS' VIOLATIONS OF THE FTC ACT

21. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits unfair or deceptive acts or practices in or affecting commerce.
22. Misrepresentations or deceptive omissions of material fact constitute deceptive acts or practices prohibited by Section 5(a) of the FTC Act.
23. Section 12(a) of the FTC Act, 15 U.S.C. § 52(a), prohibits the dissemination of any false advertisement in or affecting commerce for the purpose of inducing, or which is likely to induce, the purchase of food, drugs, devices, services, or cosmetics. DermaTend is a “drug” as “drug” is defined in Section 15(c) of the FTC Act, 15 U.S.C. § 55(c). Lipidryl is a “food” or “drug” as “food” and “drug” are defined in Sections 15(b) and (c) of the FTC Act, 15 U.S.C. § 55(b) and (c).

COUNT ONE

False or Unsubstantiated Efficacy and Safety Claims for DermaTend

24. Through the means described in Paragraph 17, including, but not limited to, the statements and depictions contained in the advertisements attached as Exhibits A through J, Defendants, directly and through affiliates acting on their behalf and for their benefit, have represented, expressly or by implication, that:

- A. DermaTend effectively and permanently removes moles, skin tags, and warts, including genital warts;
- B. Clinical tests prove that DermaTend effectively and permanently removes moles, skin tags, and warts, including genital warts;
- C. DermaTend Original rapidly removes moles, skin tags, and warts, including genital warts, as soon as after one application, overnight, or in three days;
- D. DermaTend Ultra rapidly removes moles, skin tags, and warts, including genital warts, as soon as after eight hours or overnight;
- E. DermaTend causes little or no scarring, and less scarring than surgery;
- F. Doctors recommend DermaTend;
- G. Most dermatologists agree that DermaTend is safe to use and worth a try;
- H. DermaTend is safe, including for use on children; and
- I. DermaTend has a 97% success rate.

25. The representations set forth in Paragraph 24 are false or were not substantiated at the time the representations were made.

26. Therefore, the making of the representations as set forth in Paragraph 24 of this Complaint

constitutes a deceptive act or practice and the making of false advertisements, in or affecting commerce, in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. § 45(a) and 52.

COUNT TWO

Failure to Disclose Material Connection with Consumer Endorsers

27. Through the means described in Paragraph 17, Defendants, directly and through affiliates acting on their behalf and for their benefit, have represented, directly or by implication, that consumers appearing in advertisements for DermaTend are satisfied users of DermaTend.

28. Defendants and their affiliates have failed to disclose to consumers that Defendants offered to pay or paid consumers to provide endorsements. This additional information would be material to consumers in their purchase or use of DermaTend.

29. Defendants' failure to disclose the material information described in Paragraph 28, in light of the representation described in Paragraph 27, constitutes a deceptive act or practice and the making of false advertisements, in or affecting commerce, in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

COUNT THREE

Failure to Disclose Material Connection with Affiliates

30. Through the means described in Paragraph 17, Defendants, through affiliates acting on their behalf and for their benefit, have represented, expressly or by implication, that the reviews and endorsements on the affiliate marketers' websites are from persons who have used or evaluated the effectiveness of DermaTend.

31. Defendants and their affiliates have failed to disclose, or to disclose adequately, to consumers that affiliates receive financial compensation from the sale of DermaTend. This

additional information would be material to consumers in their purchase or use of DermaTend.

32. Defendants' failure to disclose the material information described in Paragraph 31, in light of the representation described in Paragraph 30, constitutes a deceptive act or practice and the making of false advertisements, in or affecting commerce, in violation of Section 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

COUNT FOUR

False Claim that Affiliate Site Content Is Independent

33. Through the means described in Paragraph 17, Defendants, through affiliates acting on their behalf and for their benefit, have represented, expressly or by implication, that reviews of DermaTend on affiliate sites were independent reviews reflecting the opinions of ordinary consumers.

34. In truth and in fact, reviews of DermaTend on affiliate sites were not independent reviews reflecting the opinions of ordinary consumers. These reviews were created in furtherance of Defendants' program to promote the sale of DermaTend, and the affiliates are compensated for completed DermaTend sales referred to Defendants.

35. Therefore, the making of the representation in Paragraph 33 constitutes a deceptive act or practice and the making of false advertisements, in or affecting commerce, in violation of Section 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

COUNT FIVE

False Establishment Claims for Lipidryl

36. Through the means described in Paragraph 20, including, but not limited to, the statements and depictions contained in the advertisements attached as Exhibit K, Defendants have

represented, expressly or by implication, that:

- A. Clinical tests prove that Lipidryl users will lose substantial weight, such as 28 pounds in 10 weeks; and
- B. Clinical tests prove that Lipidryl users will experience a substantial reduction in waist circumference, such as 6.7 inches, and a substantial reduction in body fat, such as 18%.

37. In truth and in fact:

- A. Clinical tests do not prove that Lipidryl users will lose substantial weight, such as 28 pounds in 10 weeks; and
- B. Clinical tests do not prove that Lipidryl users will experience substantial reductions in waist circumference and body fat, such as 6.7 inches in waist circumference and 18% body fat.

38. Therefore, the making of the representations as set forth in Paragraph 36 of this Complaint constitutes a deceptive act or practice and the making of false advertisements, in or affecting commerce, in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

CONSUMER INJURY

39. Consumers have suffered and will continue to suffer substantial injury as a result of Defendants' violations of the FTC Act. In addition, Defendants have been unjustly enriched as a result of their unlawful acts or practices. Absent injunctive relief by this Court, Defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

40. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and such other relief as the Court may deem appropriate to halt and redress violations of any

provision of law enforced by the FTC. The Court, in the exercise of its equitable jurisdiction, may award ancillary relief, including, but not limited to, rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies, to prevent and remedy any violation of any provision of law enforced by the FTC.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, Federal Trade Commission, pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and the Court's own equitable powers, requests that the Court:

- A. Enter a permanent injunction to prevent future violations of the FTC Act by Defendants;
- B. Award such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the FTC Act, including, but not limited to, rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies; and
- C. Award Plaintiff the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.

Dated:

Respectfully submitted,
JONATHAN E. NUECHTERLEIN
General Counsel



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